

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

UNIVERSITY OF SOUTHERN
CALIFORNIA; PAC-12 CONFERENCE;
NATIONAL COLLEGIATE ATHLETICS
ASSOCIATION,

Respondents,

and

NATIONAL COLLEGE PLAYERS
ASSOCIATION,

Charging Party.

Case No. 31-CA-290326

RESPONDENT PAC-12 CONFERENCE’S ANSWER TO COMPLAINT

Respondent Pac-12 Conference (the “Pac-12”) answers as follows the allegations set forth in the separately numbered paragraphs of the Complaint and Notice of Hearing (the “Complaint”) issued by the Director of Region 31 of the National Labor Relations Board (the “Board”) in the above-captioned case dated May 18, 2023. The Pac-12 expressly denies that it violated the National Labor Relations Act (the “Act”) and further denies any allegation in the Complaint that is not expressly admitted, qualified, or otherwise answered in the enumerated paragraphs below.

1. (a) The Pac-12 admits that it received a copy of a purported unfair labor practice charge filed by the National College Players Association on or about February 15, 2022. The Pac-12 lacks knowledge or information sufficient to form a belief as to the truth of the

remaining allegations in Paragraph 1(a) of the Complaint and on that basis denies the allegations set forth therein.

(b) The Pac-12 admits that it received a copy of a purported amended unfair labor practice charge filed by the National College Players Association on or about February 29, 2022. The Pac-12 lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 1(b) of the Complaint and on that basis denies the allegations set forth therein.

2. (a) Paragraph 2(a) states a legal conclusion to which no response is required. To the extent a response is required, the Pac-12 admits that there are certain common rules and standards governing certain athletic competitions within the National Collegiate Athletic Association. The Pac-12 lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 2(a) of the Complaint and on that basis denies the allegations set forth therein.

(b) The Pac-12 lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2(b) of the Complaint and on that basis denies the allegations set forth therein.

(c) Paragraph 2(c) states a legal conclusion to which no response is required. To the extent a response is required, the Pac-12 lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2(c) of the Complaint and on that basis denies the allegations set forth therein.

3. (a) The Pac-12 admits that it has been an unincorporated non-profit collegiate athletic conference with offices in San Francisco and provides a jointly governed body for

sponsoring 11 men's sports and 13 women's sports, including football and basketball. The Pac-12 denies the remaining allegations in Paragraph 3(a) of the Complaint.

(b) The Pac-12 admits that it provided services valued in excess of \$50,000 outside the state of California in the 12 months preceding May 11, 2022. The Pac-12 denies the remaining allegations in Paragraph 3(b) of the Complaint.

(c) Paragraph 3(c) states a legal conclusion to which no response is required. To the extent a response is required, the Pac-12 denies the allegations in Paragraph 3(c) of the Complaint.

4. (a) The Pac-12 lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4(a) of the Complaint and on that basis denies the allegations set forth therein.

(b) The Pac-12 lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4(b) of the Complaint and on that basis denies the allegations set forth therein.

(c) Paragraph 4(c) states a legal conclusion to which no response is required. To the extent a response is required, the Pac-12 lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4(c) of the Complaint and on that basis denies the allegations set forth therein.

5. (a) Paragraph 5(a) states a legal conclusion to which no response is required. To the extent a response is required, the Pac-12 admits that there are certain common rules and standards governing certain athletic competitions within the National Collegiate Athletic Association. The Pac-12 lacks knowledge or information sufficient to form a belief as to the

truth of the remaining allegations in Paragraph 5(a) of the Complaint and on that basis denies the allegations set forth therein.

(b) The Pac-12 admits that it is a nonprofit conference member of the National Collegiate Athletics Association. The Pac-12 denies the remaining allegations in Paragraph 5(b) of the Complaint.

(c) The Pac-12 admits that the University of Southern California is a current member of the Pac-12. The Pac-12 denies the remaining allegations in Paragraph 5(c) of the Complaint.

(d) The Pac-12 admits that the University of Southern California is currently a member of the Pac-12 and the National Collegiate Athletics Association. The Pac-12 also admits that the University of Southern California is subject to certain common rules and standards applicable to the member institutions of the Pac-12 and the National Collegiate Athletics Association governing athletic competitions. The Pac-12 lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 5(d) and on that basis denies the allegations set forth therein.

(e) Paragraph 5(e) states a legal conclusion to which no response is required. To the extent a response is required, the Pac-12 denies the allegations in Paragraph 5(e) of the Complaint.

(f) Paragraph 5(f) states a legal conclusion to which no response is required. To the extent a response is required, the Pac-12 denies the allegations in Paragraph 5(f) of the Complaint.

6. (a) The Pac-12 lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6(a) of the Complaint and on that basis denies the allegations set forth therein.

(b) The Pac-12 lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6(b) of the Complaint and on that basis denies the allegations set forth therein.

(c) The Pac-12 lacks knowledge or information knowledge of information sufficient to form a belief as to the truth of the allegations in Paragraph 6(c) of the Complaint and on that basis denies the allegations set forth therein.

7. (a) Paragraph 7(a) states a legal conclusion to which no response is required. To the extent a response is required, the Pac-12 denies the allegations in Paragraph 7(a) of the Complaint.

(b) Paragraph 7(b) states a legal conclusion to which no response is required. To the extent a response is required, the Pac-12 denies the allegations in Paragraph 7(b) of the Complaint.

(c) Paragraph 7(c) states a legal conclusion to which no response is required. To the extent a response is required, the Pac-12 denies the allegations in Paragraph 7(c) of the Complaint.

8. Paragraph 8 states a legal conclusion to which no response is required. To the extent a response is required, the Pac-12 denies the allegations in Paragraph 8 of the Complaint.

9. Paragraph 9 states a legal conclusion to which no response is required. To the extent a response is required, the Pac-12 denies the allegations in Paragraph 9 of the Complaint.

REMEDIES

The Pac-12 denies that the General Counsel is entitled to any judgment or relief from the Pac-12 or to seek the judgment and relief set forth in the Complaint.

AFFIRMATIVE DEFENSES

Without admitting any of the allegations in the Complaint, and without admitting or acknowledging that the Pac-12 bears any burden of proof as to any of the allegations or defenses, the Pac-12 asserts the following affirmative defenses. The Pac-12 intends to rely upon any additional defense that becomes available or apparent during the course of this proceeding.

1. The Board lacks jurisdiction to decide the allegations against the Pac-12 as a state entity and/or political subdivision.
2. The Pac-12 is neither the employer nor joint employer of the students who play football and basketball at the University of Southern California, and, therefore, the Board lacks jurisdiction over the Pac-12 with respect to the allegations in the Complaint.
3. The students who play football and basketball at the University of Southern California are not employees, and, therefore, the Board lacks jurisdiction over them with respect to the allegations in the Complaint.
4. The allegations in the Complaint do not provide adequate notice of the matters of fact and law asserted, and, therefore, preclude full and fair litigation of the Complaint.
5. The allegations in the Complaint are foreclosed by binding court precedent.
6. The allegations in the Complaint are foreclosed by binding Board precedent.
7. The allegations in the Complaint are barred by the First Amendment of the United States Constitution.
8. The allegations in the Complaint are barred by Section 8(c) of the Act.

9. The allegations in the Complaint fail to state an unfair labor practice or any violation of the Act.

10. The allegations in the Complaint are barred in whole or in part by the applicable statute of limitations, including Section 10(b) of the Act.

11. The allegations in the Complaint are barred in whole or in part by the doctrines of waiver and estoppel.

12. The allegations in the Complaint are barred in whole or in part by the doctrines of unclean hands and laches.

13. The relief sought in the Complaint is not available under applicable law.

14. The Complaint violates the requirements of the Administrative Procedure Act.

WHEREFORE, the Pac-12 respectfully requests dismissal of the Complaint with prejudice.

Date: June 1, 2023

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of June, 2023, I caused a copy of the foregoing document to be served, via the NLRB e-filing system and electronic mail, on the following:

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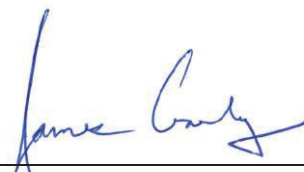
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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

UNIVERSITY OF SOUTHERN CALIFORNIA;
PAC-12 CONFERENCE; NATIONAL
COLLEGIATE ATHLETICS ASSOCIATION

Joint Employers

and

Case No. 31-CA-290326

NATIONAL COLLEGE PLAYERS
ASSOCIATION

**RESPONDENT NCAA’S ANSWER AND AFFIRMATIVE DEFENSES TO THE
COMPLAINT AND NOTICE OF HEARING**

Respondent, the National Collegiate Athletics Association (“NCAA” or “Respondent NCAA”), by and through the undersigned counsel, hereby files this Answer and Affirmative Defenses in response to the *Complaint and Notice of Hearing* (the “Complaint”) served upon it in this case on May 18, 2023 and states as follows:

This Complaint and Notice of Hearing is based on a charge filed by National College Players Association (“the Charging Party”). It is issued pursuant to Section 10(b) of the National Labor Relations Act (“the Act”), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (“the Board”) and alleges that the University of Southern California (“Respondent USC”); Pac-12 Conference, (“Respondent Pac-12”); and the National College Athletics Association (“Respondent NCAA”) (collectively “Respondents”) have violated the Act as described below.

ANSWER: In response to the allegations set forth in the unnumbered paragraph immediately preceding Paragraph 1(a) of the Complaint, Respondent NCAA states it is without sufficient knowledge to admit or deny the allegation that the National College Players Association (the “Charging Party”) filed a charge. For this reason, Respondent NCAA denies this allegation. Respondent NCAA admits that it received a charge, dated February 8, 2022, in Case No. 31-CA-290326 on or about February 15, 2022. Further, Respondent NCAA denies that the Complaint and Notice of Hearing is validly issued pursuant to Section 10(b) of the National Labor Relations Act (the “Act”), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the “Board”). Respondent NCAA admits that the Complaint purports to allege that Respondent USC, Respondent Pac-12, and Respondent NCAA violated the Act; however, Respondent NCAA denies that a violation of the Act has occurred, that the Complaint states a claim upon which relief may be granted and further denies that the Charging Party or the Board is entitled to any relief from Respondent NCAA, Respondent Pac-12 or Respondent USC in connection with this action or otherwise.

1. (a) The charge in this proceeding was filed by the Charging Party on February 8, 2022, and a copy was served on Respondents by U.S. mail on February 9, 2022.

ANSWER: Respondent NCAA states it is without sufficient knowledge to admit or deny the allegations set forth in Paragraph 1(a) of the Complaint. For this reason, Respondent NCAA denies the allegations set forth in Paragraph 1(a) of the Complaint. Respondent NCAA admits that it received a charge, dated February 8, 2022, in Case No. 31-CA-290326 on or about February 15, 2022.

(b) The first amended charge in this proceeding was filed by the Charging Party on February 22, 2022, and a copy was served on Respondents by U.S. mail on February 23, 2022.

ANSWER: Respondent NCAA states it is without sufficient knowledge to admit or deny the allegations set forth in Paragraph 1(b) of the Complaint. For this reason, Respondent NCAA denies the allegations set forth in Paragraph 1(b) of the Complaint.

2. (a) At all material times, Respondent NCAA has been a private enterprise that sets common rules and standards governing collegiate competitions, with headquarter offices and a place of business located in Indianapolis, IN. It has approximately 1,100 colleges and universities as members organized into three divisions.

ANSWER: Respondent NCAA avers that the allegations set forth in Paragraph 2(a) of the Complaint, that "[a]t all material times, Respondent NCAA has been a private enterprise that sets common rules and standards governing collegiate competitions[.]" are so vague as to prevent Respondent NCAA from having sufficient knowledge to form the basis to either admit or deny the allegations. For this reason, Respondent NCAA denies the allegation set forth in Paragraph 2(a) of the Complaint that "[a]t all material times, Respondent NCAA has been a private enterprise that sets common rules and standards governing collegiate competitions[.]". Respondent NCAA admits the allegation that its headquarter office and place of business is located in Indianapolis, Indiana. Respondent NCAA further admits the allegation that there are approximately 1,100 member schools among three NCAA divisions.

(b) Annually, Respondent NCAA, in conducting its business operations, has purchased and received goods and services directly from entities located outside of the State of Indiana valued in excess of \$50,000.

ANSWER: Respondent NCAA admits the allegations set forth in Paragraph 2(b) of the Complaint.

(c) At all material times, Respondent NCAA has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

ANSWER: The allegations set forth in Paragraph 2(c) of the Complaint call for legal conclusions to which no response is deemed necessary. To the extent a response is deemed necessary, Respondent NCAA denies the allegations set forth in Paragraph 2(c) of the Complaint.

3. (a) At all material times, Respondent Pac-12 has been an unincorporated non-profit collegiate athletic conference in the western United States with offices and a principal place of business located in San Francisco, CA and has been engaged in sponsoring 11 men's sports and 13 women's sports, including football and basketball.

ANSWER: Respondent NCAA states it is without sufficient knowledge to admit or deny the allegations set forth in Paragraph 3(a) of the Complaint. For this reason, Respondent NCAA denies the allegations set forth in Paragraph 3(a) of the Complaint.

(b) In conducting its operations during the 12-month period ending May 11, 2022, Respondent Pac-12, provided services valued in excess of \$50,000.00 in States other than the State of California.

ANSWER: Respondent NCAA states it is without sufficient knowledge to admit or deny the allegations set forth in Paragraph 3(b) of the Complaint. For this reason, Respondent NCAA denies the allegations set forth in Paragraph 3(b) of the Complaint.

(c) At all material times, Respondent Pac-12 has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

ANSWER: The allegations set forth in Paragraph 3(c) of the Complaint call for legal conclusions to which no response is deemed necessary. To the extent a response is deemed necessary, Respondent NCAA states it is without sufficient knowledge to admit or deny the

allegations set forth in Paragraph 3(c) of the Complaint. For this reason, Respondent NCAA denies the allegations set forth in Paragraph 3(c) of the Complaint.

4. (a) At all material times, Respondent USC has been a California corporation with an office and principal place of business in Los Angeles, California, where it is engaged in the business of providing higher education.

ANSWER: Respondent NCAA states it is without sufficient knowledge to admit or deny the allegations set forth in Paragraph 4(a) of the Complaint. For this reason, Respondent NCAA denies the allegations set forth in Paragraph 4(a) of the Complaint.

(b) In conducting its operations during the 12-month period ending June 6, 2022, Respondent USC, derived gross revenues in excess of \$1,000,000 and purchased and received goods and materials valued in excess of \$5,000 directly from points located outside the State of California.

ANSWER: Respondent NCAA states it is without sufficient knowledge to admit or deny the allegations set forth in Paragraph 4(b) of the Complaint. For this reason, Respondent NCAA denies the allegations set forth in Paragraph 4(b) of the Complaint.

(c) At all material times, Respondent USC has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

ANSWER: The allegations set forth in Paragraph 4(c) of the Complaint call for legal conclusions to which no response is deemed necessary. To the extent a response is deemed necessary, Respondent NCAA states it is without knowledge to admit or deny the allegations set forth in Paragraph 4(c) of the Complaint. For this reason, Respondent NCAA denies the allegations set forth in Paragraph 4(c) of the Complaint.

5. (a) At all material times, Respondent NCAA has been a private enterprise that sets common rules and standards governing collegiate competitions, with approximately 1,100 colleges and universities as members organized into three divisions. Each division is divided into conferences, with each division having its own governing structure.

ANSWER: Respondent NCAA avers that the allegations in Paragraph 5(a) of the Complaint, that "[a]t all material times, Respondent NCAA has been a private enterprise that sets common rules and standards governing collegiate competitions" are so vague as to prevent Respondent NCAA from having sufficient knowledge to either admit or deny the allegations. For this reason, Respondent NCAA denies the allegations that "[a]t all material times, Respondent NCAA has been a private enterprise that sets common rules and standards governing collegiate competitions." Respondent NCAA admits the allegation that there are approximately 1,100 member schools among three NCAA divisions. Respondent NCAA denies the allegation that each division is divided into conferences. However, Respondent NCAA admits that each division has a number of conferences, and each division has its own governing structure. Respondent NCAA avers that it does not create the conferences in any of the NCAA's divisions and it does not play a role in determining which schools join each conference. Upon information and belief, some NCAA member schools choose not to join a conference.

(b) At all material times, Respondent Pac-12 has been one of the non-profit athletic conferences described above in paragraph 5(a) and is a member of NCAA.

ANSWER: Respondent NCAA states that the allegations in Paragraph 5(b) of the Complaint, that "[a]t all materials times, Respondent Pac-12 has been one of the non-profit athletic conferences described above in paragraph 5(a) [of the Complaint]" are so vague as to prevent Respondent NCAA from having sufficient knowledge to form the basis to either admit or

deny the allegations. For this reason, Respondent NCAA denies the allegation that "[a]t all material times, Respondent Pac-12 has been one of the non-profit athletic conferences described above in paragraph 5(a) [of the Complaint]". Respondent NCAA admits that Respondent Pac-12 is currently a member conference of Respondent NCAA.

(c) Respondent USC currently is part of the Pac-12 conference.

ANSWER: Upon information and belief, Respondent NCAA admits the allegations set forth in Paragraph 5(c) of the Complaint.

(d) At all material times, Respondent USC was a member of Respondents Pac-12 and NCAA and has agreed to follow their rules and standards governing collegiate competitions.

ANSWER: Respondent NCAA avers that the allegations in Paragraph 5(d) of the Complaint, that "[a]t all material times, Respondent USC was a member of Respondents Pac-12 and NCAA[.]" are so vague as to prevent Respondent NCAA from having sufficient knowledge to form the basis to either admit or deny the allegations. For this reason, Respondent NCAA denies the allegations that "[a]t all material times, Respondent USC was a member of Respondents Pac-12 and NCAA[.]" Upon information and belief, Respondent NCAA admits that Respondent USC is currently a member of Respondent PAC-12. Respondent NCAA admits that Respondent USC is currently a member school of the NCAA. Respondent NCAA states that the allegations in Paragraph 5(d) of the Complaint, that "Respondent USC has agreed to follow [Respondent NCAA and Respondent Pac-12's] rules and standards governing collegiate competitions", are so vague as to prevent Respondent NCAA from having sufficient knowledge to form the basis to either admit or deny the allegations. For this reason, Respondent NCAA denies the allegations that Respondent

USC "has agreed to follow the rules and standards governing collegiate competitions [of Respondent PAC-12 and Respondent NCAA]".

(e) At all material times, Respondents Pac-12 and NCAA possessed and/or exercised control over the labor relations policies of Respondent USC's scholarship and non-scholarship/walk-on players on the football and both women's and men's basketball teams, herein called "Players at Academic Institutions" or "Players," and/or administered a common labor policy with Respondent USC with respect to the Players.

ANSWER: Respondent NCAA avers that the allegations in Paragraph 5(e) of the Complaint are so vague as to prevent Respondent NCAA from having sufficient knowledge concerning the allegations against Respondent NCAA to form the basis to either admit or deny the allegations. For this reason, Respondent NCAA denies the allegations set forth in Paragraph 5(e) of the Complaint.

(f) At all material times, Respondent USC, Respondent Pac-12 and Respondent NCAA have been joint employers of the Players.

ANSWER: The allegations set forth in Paragraph 5(f) of the Complaint call for legal conclusion to which no response is deemed necessary. To the extent a response is deemed necessary, Respondent NCAA denies the allegations set forth in Paragraph 5(f) of the Complaint.

6. At all material times, Respondent USC has maintained the following rules in its USC Athletics Student-Athlete Handbook and its Social Media Policy & Guidelines for Student Athletes:

(a) Interviews

We ask the media to direct all interview requests through the sports information office. We will contact you and work around your athletic, academic and social schedules. You'll be asked to come to the sports

information office at an agreed-upon time to be interviewed in person or to conduct a phone interview. . .

When doing interviews:

* * *

- Be positive.
* * *
- Smile and have fun

ANSWER: Respondent NCAA states it is without sufficient knowledge to admit or deny the allegations in Paragraph 6(a) of the Complaint. For this reason, Respondent NCAA denies the allegations set forth in Paragraph 6(a) of the Complaint. Respondent NCAA further avers that the Complaint fails to identify any actor, agent, supervisor, manager or official of Respondent NCAA alleged to have had knowledge or control over Respondent USC's Handbook.

(b) Social Media Policy and Guidelines

An Important Message About Social Media

* * *

Because the Internet can be accessed by anyone, it is recommended that student-athletes [sic] do not post information— including photographs and text—and/or join “groups” that do not promote positive behavior. . . Inappropriate language, behavior or postings, as well as postings that violate NCAA rules, could lead to repercussions from the USC athletic department.

* * *

Put your viewing setting on “Private” so only your friends can see your postings.

* * *

Set your security settings so that only your friends can view your profile.

* * *

Do not post anything that would embarrass USC, your team or your family.

ANSWER: Respondent NCAA states it is without sufficient knowledge to admit or deny the allegations in Paragraph 6(b) of the Complaint. For this reason, Respondent NCAA denies the

allegations set forth in Paragraph 6(b) of the Complaint. Respondent NCAA avers that the Complaint fails to identify any actor, agent, supervisor, manager or official of Respondent NCAA alleged to have had knowledge or control over Respondent USC's Handbook.

(c) Social Media Policy & Guidelines for Student Athletes

. . . . As leaders[,] you have the responsibility to portray yourself, USC, your team, your University and yourselves in a positive manner at all times. . . .

* * *

Examples of inappropriate and offensive behaviors concerning participation in online communities may include . . . Information that is sensitive or personal in nature or is proprietary to the USC Athletic Department or the University, which is not public information (examples: tentative or future team schedules, student-athlete injuries and eligibility status, travel plans/ itineraries or information). . . .

* * *

If you are ever in doubt of the appropriateness of your online public material, consider whether it upholds and positively reflects your own values and ethics as well as the USC Athletic Department's and University's. Remember, always present a positive image and don't do anything to embarrass yourself, the team, your family or the University.

ANSWER: Respondent NCAA states it is without sufficient knowledge to admit or deny the allegations set forth in Paragraph 6(c) of the Complaint. For this reason, Respondent NCAA denies the allegations set forth in Paragraph 6(c) of the Complaint. Respondent NCAA avers that the Complaint fails to identify any actor, agent, supervisor, manager or official of Respondent NCAA alleged to have had knowledge or control over Respondent USC's Handbook.

7. (a) At all material times, the Players have been and are employees within the meaning of Section 2(3) of the Act.

ANSWER: The allegations set forth in Paragraph 7(a) of the Complaint call for legal conclusions to which no response is deemed necessary. To the extent a response is deemed necessary, Respondent NCAA denies the allegations set forth in Paragraph 7(a) of the Complaint.

(b) At all material times Respondents, both jointly and severally, have misclassified the Players as non-employee student athletes, including in the USC Athletics Student-Athlete Handbook.

ANSWER: Respondent NCAA denies the allegations set forth in Paragraph 7(b) of the Complaint. Respondent NCAA avers that the Complaint fails to identify any actor, agent, supervisor, manager or official of Respondent NCAA alleged to have "misclassified the Players as non-employee student athletes", or to have had knowledge or control over Respondent USC's Handbook.

(c) Respondents, both jointly and severally, have maintained the misclassification described above in paragraph 7(b) to intentionally deprive the Players of their rights under Section 7 of the Act and to discourage employees from engaging in protected concerted activities.

ANSWER: Respondent NCAA denies the allegations set forth in Paragraph 7(c) of the Complaint. Respondent NCAA avers that the Complaint fails to identify any actor, agent, supervisor, manager or official of Respondent NCAA alleged to have "maintained the misclassification described above in paragraph 7(b) to intentionally deprive the Players of their rights under Section 7 of the Act and to discourage employees from engaging in protected concerted activities."

8. By the conduct described above in paragraphs 6 and 7, Respondents have been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

ANSWER: The allegations set forth in Paragraph 8 of the Complaint call for legal conclusions to which no response is required. To the extent that a response is deemed required, Respondent NCAA denies the allegations set forth in Paragraph 8 of the Complaint.

9. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER: The allegations set forth in Paragraph 9 of the Complaint call for legal conclusions to which no response is required. To the extent that a response is deemed required, Respondent NCAA denies the allegations set forth in Paragraph 9 of the Complaint.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraph 7, the General Counsel seeks an Order requiring Respondents to:

- i. Cease and desist from misclassifying the Players as non-employee “student-athletes;” and
- ii. Reclassify the Players as employees rather than as “student-athletes” in their files, including, but not limited to, their handbooks and rules, and notify all current Players that they have done so.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER: In response to the allegations set forth in the *ad damnum* clause immediately following Paragraph 9 of the Complaint, Respondent NCAA denies that any unfair labor practices have occurred as alleged in this Complaint and further denies that the General Counsel, on behalf of the Charging Party, is entitled to the relief sought in the *ad damnum* clause, including subparts (i) and (ii), or otherwise.

GENERAL DENIAL

Respondent NCAA denies each and every allegation of the Complaint not expressly admitted above.

AFFIRMATIVE AND OTHER DEFENSES

Respondent NCAA alleges and asserts the following affirmative defenses, and reserves the right to assert additional affirmative defenses which become appropriate during the course of these proceedings:

1. The instant Complaint fails to comply with the notice requirements set forth under the Administrative Procedure Act, 5 U.S.C. Section 554(b)(3), is deficient pursuant to Section 102.15 of the Board's Rules and Regulations, 29 C.F.R. Section 102.15, and denies Respondent NCAA due process of law. For this reason, this Complaint should be dismissed in its entirety.

2. The Board lacks jurisdiction over this action because the Charging Party is not a labor organization under Section 2(5) of the Act, the Charging Party is not an employee under Section 2(3) of the Act, and this action does not reflect a labor dispute.

3. The Board lacks jurisdiction over Respondents pursuant to the Board's decision in *Northwestern University*, 362 NLRB No. 167 (2015).

4. The Board is precluded from re-litigating the issue of jurisdiction over Respondent NCAA pursuant to the *collateral estoppel* doctrine.

5. The Board lacks jurisdiction over Respondent NCAA because Respondent NCAA is not an employer under the Act.

6. The Board lacks jurisdiction over Respondent NCAA because Respondent NCAA as a member led institution does not sufficiently affect commerce as defined in Section 2(6) and 2(7) of the Act.

7. The Board should decline to exercise jurisdiction over Respondents because doing so would not effectuate the purposes of the Act.

8. The Board should decline to exercise jurisdiction over Respondents because doing so would create instability in collegiate athletics.

9. The Board should decline to exercise jurisdiction over Respondents because doing so would place the Act at odds with other existing federal statutes, including but not limited to the Fair Labor Standards Act, 29 U.S.C. Sections 201-219 and FLSA Field Operations Handbook, Chapter 10 Section 10b24(a) and 10b03; the federal tax code, I.R.C. Section 117; Title IX, 20 U.S.C. Section 1681 *et seq.*; and federal immigration law, 8 C.F.R. Section 214.2(f)(9).

10. The Board should decline to exercise jurisdiction over Respondents because doing so would place the Act at odds with state workers compensation laws.

11. The Board should decline to exercise jurisdiction over Respondents because there have been no changed circumstances in the law sufficient to warrant the Board's departure from its decision in *Northwestern University*, 362 NLRB No. 167 (2015).

12. The Board should decline to exercise jurisdiction over Respondent NCAA because Respondent NCAA has no authority to collectively bargain on behalf of any member school or conference, and is not otherwise an appropriate representative for the purposes of collective bargaining.

13. The Board should decline to exercise jurisdiction generally over sports governing bodies with state members exempt from the Board's jurisdiction as a class, sports governing bodies for the conduct of their members as a class, and Respondent NCAA as a member of each of these classes, pursuant to Section 14(c) of the Act.

14. Respondent NCAA reasonably relied on the longstanding Board precedent of the Board not to exercise jurisdiction over it, and it would be manifestly unjust for the Board to apply any decision reached in this matter retroactively.

15. The Complaint fails to state a claim upon which relief can be granted.

16. The Complaint does not allege facts sufficient to constitute a violation of the Act.

17. The Complaint has been issued without justification.

18. The conduct described in Paragraphs 6, 7(b) and 7(c) of the Complaint are protected, and lawful conduct under the First Amendment of the United States Constitution and Section 8(c) of the Act, and do not interfere with, restrain, or coerce employees in the exercise of Section 7 rights under the Act in violation of Section 8(a)(1) of the Act.

19. Respondent NCAA has not, at any time, interfered with, restrained, or coerced employees in the exercise of their Section 7 rights under the Act in violation of Section 8(a)(1) of the Act.

20. The allegations in the Complaint, in whole or in part, are frivolous and without foundation in law or fact.

21. Respondent NCAA alleges, without admitting, that even if it engaged in the conduct alleged in the Complaint, that it was permitted to do so because it is not subject to the jurisdiction of the Act and because student-athletes generally and the Players identified by the Complaint are not employees under Section 2(3) of the Act, or otherwise entitled to the Act's protection.

22. The Complaint fails, in whole or in part, based on the equitable doctrines of laches, waiver, and/or unclean hands.

23. Charging Party has engaged in vexatious litigation for an improper purpose.

For all the reasons stated herein, the Complaint should be dismissed in its entirety.



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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

**RESPONDENTS
UNIVERSITY OF SOUTHERN CALIFORNIA;
PAC-12 CONFERENCE; AND NATIONAL
COLLEGIATE ATHLETICS ASSOCIATION,**

And

Case No: 31-CA 290326

**CHARGING PARTY
NATIONAL COLLEGE PLAYERS
ASSOCIATION.**

**RESPONDENT UNIVERSITY OF SOUTHERN CALIFORNIA’S ANSWER TO
COMPLAINT, ADDITIONAL AND AFFIRMATIVE DEFENSES**

Respondent University of Southern California (“USC”), in response to the Complaint and Notice of Hearing (the “Complaint”) issued in Case No. 31-CA-290326 by the Regional Director, Region 31 of the National Labor Relations Board (“Counsel for the General Counsel”), pursuant to Section 10(b) of the National Labor Relations Act (“NLRA” or the “Act”), 29. U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the “Board”), hereby answers the Complaint as follows.

GENERAL DENIAL

Except as otherwise expressly admitted herein, and without limitation, USC denies each and every allegation contained in the Complaint and specifically denies that it violated the Act as alleged in the Complaint. Pursuant to Section 102.23 of the Board’s Rules and Regulations, USC reserves the right to amend its Answer.

ANSWERS TO COMPLAINT ALLEGATIONS

1.(a) The charge in this proceeding was filed by the Charging Party on February 8, 2022, and a copy was served on Respondents by U.S. mail on February 9, 2022.

ANSWER: In response to the allegations of Paragraph 1(a) of the Complaint, USC admits it received a copy of a charge on or about February 14, 2022, however, USC is without sufficient knowledge or information so as to form a belief as to the date of filing or service and on that basis denies the same.

1.(b) The first-amended charge in this proceeding was filed by the Charging Party on February 22, 2022, and a copy was served on Respondents by U.S. mail on February 23, 2022.

ANSWER: In response to the allegations of Paragraph 1(b) of the Complaint, USC admits it received a copy of a charge on or about February 26, 2022, however, USC is without sufficient knowledge or information so as to form a belief as to the date of filing or service and on that basis denies the same.

2.(a) At all material times, Respondent NCAA has been a private enterprise that sets common rules and standards governing collegiate competitions, with headquarter offices and a place of business located in Indianapolis, IN. It has approximately 1,100 colleges and universities as members organized into three divisions.

ANSWER: In response to the allegations of Paragraph 2(a) of the Complaint, USC lacks sufficient information to answer as to the truth or falsity of the allegations. On this basis, USC denies the allegations in this paragraph.

2.(b) Annually, Respondent NCAA, in conducting its business operations, has purchased and received goods and services directly from entities located outside of the State of Indiana valued in excess of \$50,000.

ANSWER: In response to the allegations of Paragraph 2(b) of the Complaint, USC lacks sufficient information to answer as to the truth or falsity of the allegations. On this basis, USC denies the allegations in this paragraph.

2.(c) At all material times, Respondent NCAA has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

ANSWER: The allegations of Paragraph 2(c) of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, USC lacks sufficient information to answer as to the truth or falsity of the allegations and, on this basis, USC denies the allegations in this paragraph.

3.(a) At all material times, Respondent Pac-12 has been an unincorporated non-profit collegiate athletic conference in the western United States with offices and a principal place of business located in San Francisco, CA and has been engaged in sponsoring 11 men's sports and 13 women's sports, including football and basketball.

ANSWER: In response to the allegations of Paragraph 3(a) of the Complaint, USC lacks sufficient information to answer as to the truth or falsity of the allegations. On this basis, USC denies the allegations in this paragraph.

3.(b) In conducting its operations during the 12-month period ending May 11, 2022, Respondent Pac-12, provided services valued in excess of \$50,000.00 in States other than the State of California.

ANSWER: In response to the allegations of Paragraph 3(b) of the Complaint, USC lacks sufficient information to answer as to the truth or falsity of the allegations. On this basis, USC denies the allegations in this paragraph.

3.(c) At all material times, Respondent Pac-12 has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

ANSWER: The allegations of Paragraph 3(c) of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, USC lacks sufficient information to answer as to the truth or falsity of the allegations and, on this basis, USC denies the allegations in this paragraph.

4.(a) At all material times, Respondent USC has been a California corporation with an office and principal place of business in Los Angeles, California, where it is engaged in the business of providing higher education.

ANSWER: In response to the allegations of Paragraph 4(a), USC admits that it is a non-profit corporation and leading private research university with a main campus in Los Angeles, California, where USC is dedicated to the development of human beings and society as a whole through extensive interdisciplinary study, teaching, and collaboration, as well as highly advanced research and world-class scholarly and creative work.

4.(b) In conducting its operations during the 12-month period ending June 6, 2022, Respondent USC, derived gross revenues in excess of \$1,000,000 and purchased and received goods and materials valued in excess of \$5,000 directly from points located outside the State of California.

ANSWER: In response to the allegations of Paragraph 4(b), USC admits the allegations of the paragraph.

4.(c) At all material times, Respondent USC has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

ANSWER: The allegations of Paragraph 4(c) of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, USC admits that it is an employer engaged in commerce within the meaning of the Act but denies any implication that it is the employer of its students, including its student-athletes.

5.(a) At all material times, Respondent NCAA has been a private enterprise that sets common rules and standards governing collegiate competitions, with approximately 1,100 colleges and universities as members organized into three divisions. Each division is divided into conferences, with each division having its own governing structure.

ANSWER: In response to the allegations of Paragraph 5(a) of the Complaint, USC lacks sufficient information to answer as to the truth or falsity of the allegations. On this basis, USC denies the allegations in this paragraph.

5.(b) At all material times, Respondent Pac-12 has been one of the non-profit athletic conferences described above in paragraph 5(a) and is a member of NCAA.

ANSWER: In response to the allegations of Paragraph 5(b) of the Complaint, USC lacks sufficient information to answer as to the truth or falsity of the allegations. On this basis, USC denies the allegations in this paragraph.

5.(c) Respondent USC currently is part of the Pac-12 conference.

ANSWER: In response to the allegations of Paragraph 5(c), USC admits only that it is currently a member institution of the Pac-12 Conference. USC denies any remaining allegations of the paragraph.

5.(d) At all material times, Respondent USC was a member of Respondents Pac-12 and NCAA and has agreed to follow their rules and standards governing collegiate competitions.

ANSWER: In response to the allegations of Paragraph 5(d), USC admits only, that at all times since the charge was filed, it has been a member institution of the Pac-12 Conference and the NCAA, and that as part of the same agrees to follow applicable rules and standards of the Pac-12 Conference and NCAA governing intercollegiate athletic competitions. USC denies any remaining allegations of the paragraph.

5.(e) At all material times, Respondents Pac-12 and NCAA possessed and/or exercised control over the labor relations policies of Respondent USC's scholarship and non-scholarship/walk-on players on the football and both women's and men's basketball teams, herein called the "Players at Academic Institutions" or "Players," and/or administered a common labor policy with Respondent USC with respect to the Players.

ANSWER: In response to the allegations of Paragraph 5(e), USC denies that Respondents Pac-12 Conference and NCAA have ever possessed and/or exercised control over USC's labor relations policies. USC further denies the Complaint's mischaracterization that USC maintains labor relations policies that apply to scholarship or non-scholarship/walk-on student-athletes who choose to participate on USC's football or women's or men's basketball teams. USC denies any remaining allegations of the paragraph.

5.(f) At all material times, Respondent USC, Respondent Pac-12 and Respondent NCAA have been joint employers of the Players.

ANSWER: The allegations of Paragraph 5(f) of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, USC denies the allegations in this paragraph.

6. At all material times, Respondent USC has maintained the following rules in its USC Athletics Student-Athlete Handbook and its Social Media Policy & Guidelines for Student Athletes:

(a) Interviews

We ask the media to direct all interview requests through the sports information office. We will contact you and work around your athletic, academic and social schedules. You'll be asked to come to the sports information office at an agreed-upon time to be interviewed in person or to conduct a phone interview. . .

When doing interviews:

* * *

- Be positive.
- * * *
- Smile and have fun

ANSWER: In response to the allegations of Paragraph 6(a), USC denies the Complaint's mischaracterization that the cited language from USC's Athletics Student-Athlete Handbook represents mandatory "rules" for student-athletes. USC admits only that Paragraph 6(a) of the Complaint appears to be a partial, out of context, excerpt from the guidelines provided in USC's Student-Athlete Handbook in effect in the spring of 2022, which recommends, but does not require, that during media interviews student-athletes "[b]e positive" and "[s]mile and have fun." USC denies any remaining allegations in this paragraph.

6.(b) Social Media Policy and Guidelines

An Important Message About Social Media

* * *

Because the Internet can be accessed by anyone, it is recommended that student-athletes [sic] do not post information— including photographs and text—and/or join "groups" that do not promote positive behavior. . . Inappropriate language, behavior or postings, as well as postings that violate NCAA rules, could lead to repercussions from the USC athletic department.

* * *

Put your viewing setting on "Private" so only your friends can see your postings.

* * *

Set your security settings so that only your friends can view your profile.

* * *

Do not post anything that would embarrass USC, your team or your family.

ANSWER: In response to the allegations of Paragraph 6(b), USC denies the Complaint’s mischaracterization that the cited language from USC’s “Social Media Policy & Guidelines” represents mandatory “rules” for student-athletes. USC admits only that Paragraph 6(b) of the Complaint appears to be a partial, out of context, excerpt from USC’s Social Media Policy & Guidelines in effect in the spring of 2022. USC denies any remaining allegations in this paragraph.

6.(c) Social Media Policy & Guidelines for Student Athletes

. . . . As leaders[,] you have the responsibility to portray yourself, USC, your team, your University and yourselves in a positive manner at all times. . . .

* * *

Examples of inappropriate and offensive behaviors concerning participation in online communities may include . . . Information that is sensitive or personal in nature or is proprietary to the USC Athletic Department or the University, which is not public information (examples: tentative or future team schedules, student-athlete injuries and eligibility status, travel plans/ itineraries or information). . . .

* * *

If you are ever in doubt of the appropriateness of your online public material, consider whether it upholds and positively reflects your own values and ethics as well as the USC Athletic Department’s and University’s. Remember, always present a positive image and don’t do anything to embarrass yourself, the team, your family or the University.

ANSWER: In response to the allegations of Paragraph 6(c), USC denies the Complaint’s mischaracterization that the cited language from USC’s “Social Media Policy &

Guidelines for Student Athletes” represents mandatory “rules” for student-athletes. USC admits only that Paragraph 6(c) of the Complaint appears to be a partial, out of context, excerpt from USC’s Social Media Policy & Guidelines for Student Athletes in effect in the spring of 2022. USC denies any remaining allegations in this paragraph.

7.(a) At all material times, the Players have been and are employees within the meaning of Section 2(3) of the Act.

ANSWER: The allegations of Paragraph 7(a) of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, USC denies the allegations in this paragraph.

7.(b) At all material times Respondents, both jointly and severally, have misclassified the Players as non-employee student athletes, including in the USC Athletics Student-Athlete Handbook.

ANSWER: The allegations of Paragraph 7(b) of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, USC denies the allegations in this paragraph.

7.(c) Respondents, both jointly and severally, have maintained the misclassification described above in paragraph 7(b) to intentionally deprive the Players of their rights under Section 7 of the Act and to discourage employees from engaging in protected concerted activities.

ANSWER: In response to the allegations of Paragraph 7(c), USC denies the allegations in this paragraph.

8. By the conduct described above in paragraphs 6 and 7, Respondents have been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

ANSWER: The allegations of Paragraph 8 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, USC denies the allegations in this paragraph.

9. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER: The allegations of Paragraph 9 of the Complaint state a legal conclusion to which no response is required. To the extent a response is required, USC denies the allegations in this paragraph.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraph 7, the General Counsel seeks an Order requiring respondents to:

i. Cease and desist from misclassifying the Players as non-employee “student-athletes;” and

ii. Reclassify the Players as employees rather than as “student-athletes” in their files, including, but not limited to, their handbooks and rules, and notify all current Players that they have done so.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER: USC answers the unnumbered and unlettered “Wherefore” paragraph on pages 5 and 6 of the Complaint, including the sub-paragraphs (i) and (ii) and the general prayer for relief, by denying that the General Counsel, the Charging Party, or any individual is entitled

to any remedy or relief in this matter. Rather, USC respectfully requests that the Administrative Law Judge dismiss this Complaint in its entirety.

ADDITIONAL AND AFFIRMATIVE DEFENSES

USC asserts the following additional and affirmative defenses in this action, without regard to whether USC bears the burden of proof on said defenses:

1. The Complaint is impermissibly vague in that it does not provide adequate notice of the factual allegations and law asserted so as to deprive USC of adequate notice and due process to prepare its defense at trial, thereby precluding full and fair litigation of the Complaint.

2. The Complaint violates the Administrative Procedures Act through its impermissibly vague factual allegations to support the General Counsel's legal theory that Respondents USC, the Pac-12 Conference, and the NCAA constitute joint employers within the meaning of the Board's Rules and Regulations.

3. USC's students who choose to participate in intercollegiate athletics, including on USC's football and women's and men's basketball teams are not employees under the Act, and, therefore, the Board lacks jurisdiction over them with respect to the allegations in the Complaint.

4. The Board lacks jurisdiction over Respondents NCAA and the Pac-12 Conference, which are associations consisting of members that are primarily state public institutions of higher learning constituting state political subdivisions.

5. Absent jurisdiction over the Pac-12 Conference and NCAA, it does not further the purposes of the Act for the Board to extend Section 7 rights to USC's scholarship and non-scholarship student-athletes, including those participating on USC's football and men's and women's basketball teams. See *Northwestern University*, 362 NLRB 1350 (2015). USC cannot

violate the Act by allegedly interfering with Section 7 statutory rights that do not extend to student-athletes.

6. The Complaint fails to state a claim upon which relief may be granted.

7. The Complaint fails to state an unfair labor practice or any other violation of the Act.

8. The General Counsel's claims are barred, in whole or in part, to the extent that they exceed the scope of or are inconsistent with the charge and amended charge served on USC.

9. The General Counsel's theory is an impermissible effort to expand the scope of the Act, including the federal common law definition of employee, beyond current Board and judicial interpretation of the Act, and, as such, the Complaint should be dismissed in its entirety.

10. Under the Supreme Court's "major questions" doctrine, a clear statement of Congressional approval through an amendment of the Act is required to support the momentous expansion in the scope of the Act the General Counsel seeks through the Complaint by asserting jurisdiction over intercollegiate athletics.

11. USC's complained of guidelines and statements in its Student-Athlete Handbook and Social Media Policy and Guidelines are not mandatory work rules and do not violate the Act.

12. USC's actions at all times were taken in good faith in reliance on extant Board law. To the extent the General Counsel's theory is based on a change in extant Board Law, retroactive application would be manifestly inappropriate and unfair.

13. By bringing the instant action, the General Counsel seeks to compel employer speech by USC in violation of USC's rights under the First Amendment to the United States Constitution, and enforcement of any Order from the Board to prohibit USC from using the phrase "student-athletes" and/or to compel USC to use some other words to describe its students who are

members of its intercollegiate sports teams, including football or women's or men's basketball, would amount to compelled governmental speech in violation of the First Amendment.

14. The issuance of the Complaint is arbitrary, capricious, an abuse of discretion and violates USC's due process rights because "the compelling contrary documentary evidence or an objective analysis of the totality of the evidence warrants the dismissal" of the allegations in the Complaint. See NLRB Memorandum OM 06-16; see also 5 U.S.C. § 706(2)(A).

15. The issuance of the Complaint is arbitrary, capricious, an abuse of discretion and violates USC's due process rights because the Region failed to follow the Board's established procedures when investigating the Charging Party's allegations. See NLRB Memorandum OM 06-16; see also 5 U.S.C. § 706(2)(A).

USC reserves the right to raise any additional defenses not asserted herein that it may become aware through further investigation.

WHEREFORE, having fully answered the Complaint, USC respectfully requests that this action be dismissed in its entirety, that judgment be issued in favor of USC, and that the Board grant USC such other relief as is just and proper.

Dated: June 1, 2023

EPSTEIN BECKER & GREEN, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that in accordance with section 102.5 and 102.21 of the NLRB Rules and Regulations, on June 1, 2023, I served the foregoing RESPONDENT UNIVERSITY OF SOUTHERN CALIFORNIA'S ANSWER TO COMPLAINT, ADDITIONAL AND AFFIRMATIVE DEFENSES on the Parties and in the manner set forth below, with confirmation of delivery:

National Labor Relations Board
Division of Judges
By E-Filing at www.nlrb.gov

Charging Party (via email and regular mail):

(b) (6), (b) (7)(C)

National College Players Association

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)
@ncpanow.org

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Dated: June 1, 2023

EPSTEIN BECKER & GREEN, P.C.

By: _____



Daysy Palma